



## North County Watch

Looking Out Today For Tomorrow

Delivered via email to:

Secretary of the Board, Susan Baker  
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November 21, 2008

Board of Supervisors  
County of San Luis Obispo  
New County Government Center  
1055 Monterey Street, Suite D-430  
San Luis Obispo, CA 93408

Chairman Patterson and Honorable Supervisors,

North County Watch requests that you deny this appeal by Mr. Paul Viborg and uphold the denial by the Planning Commission for a sand and gravel mine in the Salinas River watershed.

The Planning Commission decision was based on the demonstrable inadequacy of the environmental review and Mr. Viborg's refusal to agree to the preparation of the legally required EIR. Numerous documents from various agencies have demonstrated the need for at a minimum a Programmatic EIR. North County Watch requests that you look at the long term health of the watershed resource and embark on the preparation on a Salinas River Watershed Specific Plan.

A Specific Plan makes sense. NCW contends that the county has an obligation to consider the cumulative impacts that might be associated with all of the applications for sand mines. In *Gray v. County of Madera (Madera Ranch Quarry, Inc.)* (2008) , Cal.App.4<sup>th</sup>, the judge notes:

However, mere awareness of proposed expansion plans or other proposed development does not necessarily require the inclusion of those proposed projects in the EIR. Rather, these proposed projects must become "probable future projects." (CEQA Guidelines, §

15130(b)(1)(A).) As noted in *San Franciscans for Reasonable Growth v City & County of San Francisco* (1984) [151 Cal.App.3d 61](#), 74, "probable future projects" can be interpreted as reasonably probable future projects. The court found that projects that are undergoing environmental review are reasonably probable future projects. (*Ibid.*) We conclude that any future project where the applicant has devoted significant time and financial resources to prepare for any regulatory review should be considered as probable future projects for the purposes of cumulative impact.

Further, we ask that you deny this appeal based on the fact that multiple applications for Sand Mines in this area of the Salinas River watershed have come, or are scheduled to come, before the Planning Commission. We contend that equal application of the law and Business Code 16000, Unfair Competition statute and 16200, prohibiting giving an unfair business advantage to one applicant over another, support denial of this appeal.

We have attached our previous comments on this issue that present a comprehensive discussion of the numerous problems arising from the multiple applications and the finite limits of the resource. Please see our attached excerpt from a paper by K. Matthias Gandolf. Our comments augment agency comments and support denial of the appeal and the tenets of Business Codes 16000, 16200.

What has yet to be determined is the actual remaining volume of sand resources that can be extracted from the watershed. We thank the Planning Commission for its previous careful consideration of the issues surrounding these applications for sand mines. We are especially grateful for their letter to the Board of Supervisors outlining the need for a Specific Plan for this valuable resource. We hope you will support a Specific Plan as a sensible management tool for these competing applications to determine if there is any remaining unpermitted resource available for extraction and how to apportion that resource.

In addition to previous issues we have raised, we submit that consideration of the impacts of Green Houses Gases has never been analyzed in connection with these applications. Environmental Review must consider both the direct and indirect impacts of a project. See CEQA Guidelines §§ 15064(d), 15358(a). "Indirect or secondary effects . . . are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable." CEQA Guidelines. § 15358(a)(2).

Environmental Review must disclose greenhouse gas emissions for all potential sources and also consider feasible mitigation measures to reduce those impacts. Previous environmental review of these projects failed to discuss greenhouse gasses at all. In a letter dated August 29, 2008, the Attorney General comments on the inadequacy of the Sacramento Draft General Plan:

Global warming is an "effect on the environment under CEQA, and an individual projects' incremental contribution to global warming can be cumulatively considered.

(See Cal.Pub. Res. Code, sec. 21083.05, subbed. (a); Sen. Rules Comm., Off. Of Sen. Floor analyses of Sen. Bill No. 97 (2007-2008 Reg. Sess.) Aug. 22, 2007.)

We are attaching a copy of our previous comments dated August 28, 2008, a letter on our behalf from the Law Offices of Michael R. Jencks.

We wish you to take administrative note that our previous comments and statements on sand mine applications become part of the record.

Thank you for your consideration of our comments.

Respectfully,

Susan Harvey

Attachments:

1. NCW letter dated August 28, 2008 RE: Viborg Sand Mine application
2. Letter from the Law Offices of Michael R. Jencks dated August 26, 2008
3. Excerpt from "Hungry Water: Effects of Dams and Gravel Mining on River Channels"

G. MATHIAS KONDOLF (<http://www.ced.berkeley.edu/ced/people/query.php?id=66/>)

***"Hungry Water: Effects of Dams and Gravel Mining on River Channels"***

ABSTRACT

Rivers transport sediment from eroding uplands to depositional areas near sea level. If the continuity of sediment transport is interrupted by dams or removal of sediment from the channel by gravel mining, the flow may become sediment-starved (hungry water) and prone to erode the channel bed and banks, producing channel incision (downcutting), coarsening of bed material, and loss of spawning gravels for salmon and trout (as smaller gravels are transported without replacement from upstream)...Damming and mining have reduced sediment delivery from rivers to many coastal areas, leading to accelerated beach erosion. Sand and gravel are mined for construction aggregate from river channel and floodplains. In-channel mining commonly causes incision, which may propagate up- and downstream of the mine, undermining bridges, inducing channel instability, and lowering alluvial water tables...Management of sand and gravel in rivers must be done on a regional basis, restoring the continuity of sediment transport where possible and encouraging alternatives to river-derived aggregate sources.